

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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|-----------------------|---------------|-------------------|-----------|
| In re Application of: | Kolter et al. | Docket No.: | 51284 |
| Application No.: | 09/811,546 | Examiner: | SILVERMAN |
| Filed: | 3/20/2001 | Art Unit: | 1615 |
| Customer No.: | 26474 | Confirmation No.: | 9100 |

For: Solid oral dosage forms with delayed release of active ingredient and high mechanical stability

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PETITION UNDER 37 C.F.R. § 1.181

Statement of the facts involved: In response to the final office action of April 23, 2009, applicants filed a reply including amendments to the claims. As stated in the Advisory Action mailed June 18, 2009, the amendments were denied entry on the basis that they would raise new issues that would require further consideration and/or search. On July 23, 2009, Applicants filed a Request for Continued Examination (RCE) to have the amendments entered and considered. The subsequent Office action mailed September 17, 2009, was made final.

Point to be reviewed: Whether the examiner erred in making the Office action of September 17, 2009, final.

Action requested: Withdraw the finality of the Office action of September 17, 2009.

Remarks: As expressed in MPEP §706.07(b), it is not proper to make final a first Office action in an RCE where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because new issues were raised that required further consideration and/or search.

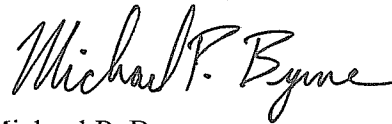
Withdrawal of the finality of the Office action of September 17, 2009, is respectfully solicited.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account 14.1437. Please credit any excess fees to such account.

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Respectfully submitted,
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A handwritten signature in black ink, reading "Michael P. Byrne". The signature is written in a cursive, flowing style.

Michael P. Byrne
Registration No.: 54,015